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**DEPARTMENT OF HOMELAND SECURITY  
U.S. Customs and Border Protection**

**Notice of Opportunity and Procedures to Request Assistance on Tariff Classification  
and Customs Valuation Treatment by Other Customs Administrations Affecting  
United States Exports**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document describes opportunities available to U.S. exporters to obtain assistance from U.S. Customs and Border Protection (CBP) to resolve matters concerning the tariff classification and customs valuation applied to U.S. exports by other governments. By publication of this notice, CBP invites U.S. exporters to submit requests for such assistance.

**DATE:** [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESS:** Requests for assistance may be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Commercial and Trade Facilitation Division, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** For tariff classification matters, please contact Jacinto Juarez, Tariff Classification and Marking Branch, at (202) 325-0027, or Greg Connor, Tariff Classification and Marking Branch, at (202) 325-0025. For matters involving customs valuation, please contact Yuliya Gulis, Valuation and Special Programs Branch, at (202) 325-0042.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

U.S. Customs and Border Protection (CBP) has direct responsibility for enhancing U.S. economic competitiveness through the enforcement of the laws of the United States and the fostering of lawful international trade and travel. By reducing costs for industry and enforcing trade laws against counterfeit, unsafe, and fraudulently imported goods, CBP is working to facilitate legitimate trade, contribute to American economic prosperity, and protect against risks to public health and safety.

As part of CBP's mission to secure and facilitate lawful international trade, CBP applies a number of legal requirements to goods imported into the customs territory of the United States. In almost all cases, imported goods must be "entered" (that is, declared to CBP), and are subject to detention and examination by CBP officers to ensure compliance with all laws and regulations enforced and administered by CBP. As part of the entry process, goods must be classified under the Harmonized Tariff Schedule of the United States (HTSUS) and their customs value must be determined. CBP is responsible for fixing the final tariff classification and customs valuation of entered goods through a process called "liquidation." In making classification and valuation determinations, CBP applies two international instruments: the Harmonized Commodity Description Coding System (also known as the Harmonized System (HS)), and the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994 (also known as the World Trade Organization (WTO) Agreement on Customs

Valuation or the “WTO Valuation Agreement”). Both international instruments share a similar goal of ensuring, at the technical level, a standard or uniform approach to the interpretation and application of tariff classification and valuation principles, respectively.

### **Tariff Classification**

Pursuant to the International Convention on the Harmonized Commodity Description and Coding System (the “HS Convention”), the World Customs Organization (WCO) developed the HS. The HS is an internationally-standardized product nomenclature used to classify traded products by name and number, and is intended to ensure, at the technical level, a uniform approach to the interpretation and application of tariff classifications. The WCO, established in 1952 as the Customs Co-operation Council (CCC), is an independent, intergovernmental body whose mission is to enhance the effectiveness and efficiency of customs administrations. The United States, along with 149 other countries and the European Union, is a contracting party to the HS Convention and uses the HS as a basis for its customs tariffs and the collection of international trade statistics.

Subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 (Sec. 1201, Pub. L. 100-418, 102 Stat. 1147, Aug. 23, 1988 (19 U.S.C. 3001)) (the Act) provides for the approval and implementation in the United States of the tariff classification principles set forth in the HS Convention and its associated Harmonized System nomenclature. More specifically, the Act provides for congressional approval of U.S. accession to the HS Convention (section 1203), enactment of the HTSUS (section

1204), and the publication of foreign trade statistics in conformity with the HS nomenclature (section 1208). In addition, under section 1209, the United States Trade Representative (USTR) is made responsible for coordinating trade policy concerning the HS Convention.

Section 1210 of the Act provides that, subject to the policy direction of USTR, the Departments of Treasury and Commerce and the United States International Trade Commission (the Commission) shall have responsibility for formulating U.S. positions on technical and procedural issues relating to tariff classification under the HS Convention, and for representing the United States government at the WCO with respect thereto.

To foster international uniformity in tariff classification matters under the HS, contracting parties have vested the WCO with responsibility for securing uniform interpretation of the HS and its periodic updating in light of developments in technology and changes in trade patterns. See Article 7 of the HS Convention. The WCO manages this process through the Harmonized System Committee (HSC), a committee composed of contracting parties to the HS Convention which meets twice a year to examine policy matters, take decisions on classification questions, settle disputes, and prepare amendments to the HS nomenclature and its Explanatory Notes. In accord with procedures established by the WCO governing body (the WCO Council), the HSC also prepares amendments updating the HS every four to six years.

On November 10, 1988, the Office of the U.S. Trade Representative published in a **Federal Register** notice procedures to implement sections 1209 and 1210 of the Act. See 53 **FR** 45646. Therein, USTR designated the Treasury Department, represented at the time by legacy U.S. Customs Service (now CBP, as part of the Department of

Homeland Security), to lead the U.S. delegation at meetings of the HSC at the WCO in Brussels, Belgium. Accordingly, Regulations and Rulings, within CBP's Office of International Trade, leads U.S. delegations at semi-annual meetings of the HSC at the WCO. CBP also serves with the Commission on U.S. delegations at meetings of the Harmonized System Review Subcommittee, which occur twice per year at the WCO.

Article 10 of the HS Convention provides that any dispute between contracting parties concerning the interpretation or application of the HS Convention is to be settled by negotiation between the contracting parties to the extent possible. If this cannot be accomplished, the parties (that is, the governments concerned) are to refer the dispute to the HSC for its consideration and recommendations. The HSC, in turn, is to refer irreconcilable disputes to the WCO Council for its recommendations.

### **Customs Valuation**

With respect to customs valuation, the WTO Valuation Agreement established a standard system for the valuation of imported goods. The WTO Valuation Agreement ensures that determinations of the customs value for the application of duty rates to imported goods are applied in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. As one of 160 Members of the WTO, the United States uses the Valuation Agreement as the basis for proper customs valuation methodology.

Merchandise imported into the United States is appraised for customs purposes in accordance with Section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a) (TAA). Consistent with principles set forth

in the WTO Valuation Agreement, the primary method of appraisement is transaction value, which is defined as “the price actually paid or payable for the merchandise when sold for exportation to the United States,” plus amounts for certain statutorily enumerated additions to the extent not otherwise included in the price actually paid or payable. See 19 U.S.C. 1401a(b)(1). When transaction value cannot be applied, then the appraised value is determined based on the other valuation methods in the order specified in 19 U.S.C. 1401a(a).

The WTO Valuation Agreement established the Technical Committee on Customs Valuation (TCCV), which operates under the auspices of the WCO, with a view to ensuring the uniform interpretation and application of internationally agreed upon customs valuation principles. The TCCV is responsible for the examination of technical problems arising in the day-to-day administration of the customs valuation systems of WTO Valuation Agreement signatories. In addition, the TCCV renders advisory opinions on appropriate solutions based upon the facts presented. The TCCV meets twice a year at the WCO to discuss issues concerning the interpretation and application of the WTO Valuation Agreement.

Pursuant to Annex II to the WTO Valuation Agreement, the United States has the right to be represented at the TCCV to examine specific problems arising from the administration of the customs valuation systems of Members. The United States, which currently serves as Chair to the TCCV, may nominate one delegate and one or more alternates to be its representatives on the TCCV at semi-annual meetings in Brussels. CBP represents the United States at the semi-annual meetings of the TCCV at the WCO.

Additionally, under Article 19 of the WTO Valuation Agreement, the United States may request consultation with a Member or Members if the U.S. considers any benefit to it under the Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded, directly or indirectly, as a result of the actions of another Member. Disputes arising under Article 19 of the WTO Valuation Agreement may be referred to the TCCV for an examination of any questions requiring technical consideration.

#### **CBP Participation at Meetings of the Harmonized System Committee and the Technical Committee on Customs Valuation**

Accordingly, at meetings of the HSC and TCCV at the WCO, the United States and other customs administrations participate and communicate regularly on issues concerning the interpretation and application of the HS and the WTO Valuation Agreement. Historically, it has been useful for CBP to conduct discussions with other customs administrations at the WCO with a view to reaching a common understanding and interpretation of these instruments. Such discussions can often serve to eliminate or resolve export issues for U.S. traders.

For example, in 2014 CBP was contacted by a U.S. exporter who believed that its textile article was being misclassified by another customs administration. The company brought to CBP's attention the analysis applicable to the merchandise under published CBP rulings available at <http://rulings.cbp.gov>. The company requested that CBP contact the foreign customs administration to resolve the tariff classification matter, and if the matter could not be resolved, the U.S. company requested that CBP refer the matter to the HSC at the WCO.

Within 30 days of receiving the technical assistance request, attorneys from the Tariff Classification and Marking Branch and import specialists from the National Commodity Specialist Division, within the Office of Regulations and Rulings (R&R), Office of International Trade reviewed the underlying classification issue and determined that the foreign customs administration's treatment of the merchandise was inconsistent with the proper interpretation of the HS. Following CBP's determination of the correct classification of the merchandise, R&R attorneys raised the issue bilaterally with the foreign customs administration and asked them to consider the matter.

Following this bilateral exchange, and within seven months of the initial technical assistance request, CBP secured a favorable decision by the foreign customs administration to classify the merchandise in a manner consistent with the U.S. position and as requested by the exporter. As a result of CBP's engagement with the foreign customs administration, the U.S. company was able to obtain the correct tariff treatment of its imported merchandise in the foreign country.

#### **Inquiries Concerning Tariff Classification or Customs Valuation by Other Customs Administrations Affecting U.S. Exports**

By publication of this notice, U.S. Customs and Border Protection emphasizes that opportunities exist to strengthen communication and coordination between industry, CBP, other customs administrations, and the WCO to advance the shared goal of facilitating international trade. Greater collaboration with industry promotes improved technical understanding among contracting parties and helps to foster uniformity in the interpretation and application of the HS Convention and WTO Valuation Agreement.



On matters involving non-uniform tariff classification or customs valuation treatment by other customs administrations, individual parties or firms do not have standing to initiate dispute settlement procedures or consultations under the HS Convention or the WTO Valuation Agreement. Consequently, for a U.S. individual or firm to raise a tariff classification or customs valuation dispute, that party must file an inquiry or complaint with the U.S. government and provide, or assist in the collection of, any information relating to the matter which may be required.

Accordingly, CBP hereby invites U.S. exporters to file with CBP requests for assistance in resolving any tariff classification or customs valuation treatment by other customs administrations affecting U.S. exports. Of course, as a threshold technical matter, in order to provide the requested assistance, CBP must agree with the position of the exporter with regard to the specific matter brought to CBP's attention.

CBP will endeavor to provide an initial response to such requests within 60 days of their receipt. Thereafter, in cooperation with the appropriate agencies, CBP will consider the appropriate course of action, including but not limited to the initiation of consultations or dispute settlement at meetings of the HSC or TCCV at the WCO. The inquirer or complainant will be informed of the progress achieved in resolving the matter. Requests for assistance on tariff classification or customs valuation treatment by other customs administrations affecting U.S. exports should be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Commercial and Trade Facilitation Division, 90 K St., NE, 10<sup>th</sup> Floor, Washington, DC 20229-1177.

### **Confidentiality**

Information submitted by U.S. exporters concerning requests for assistance may, in some instances, include confidential commercial or financial information, the disclosure of which could result in competitive harm to the business submitter. Such information is, generally, protected under the provisions of the Freedom of Information Act (5 U.S.C. 552) (FOIA), the Privacy Act (5 U.S.C. 552a), and the Trade Secrets Act (18 U.S.C. 1905). If confidential treatment is requested, submitters should specifically designate the information it considers confidential. Such requests will be handled in accordance with CBP Regulations (19 CFR 103.35) regarding the protection of such information.

Dated: June 12, 2015

Brenda B. Smith  
Assistant Commissioner  
Office of International Trade

[FR Doc. 2015-14968 Filed: 6/17/2015 08:45 am; Publication Date: 6/18/2015]